

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JAMES H. GREEN,

Petitioner,

vs.

E.K. McDANIEL, *et al.*,

Respondents.

3:11-cv-00230-LRH-VPC

**ORDER**

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner.

On March 14, 2012, the Court entered an order, granting in part and denying in part, respondents' motion to dismiss the petition. (ECF No. 28). The Court made specific findings that Grounds 5B and 5D of the petition were unexhausted. (*Id.*). Petitioner was granted thirty days to do one of the following:

(1) inform this court in a sworn declaration that he wishes to formally and forever abandon the unexhausted grounds for relief in his federal habeas petition and proceed on the exhausted grounds; OR (2) inform this court in a sworn declaration that he wishes to dismiss this petition without prejudice in order to return to state court to exhaust his unexhausted claims; OR (3) file a motion for a stay and abeyance, asking this court to hold his exhausted claims in abeyance while he returns to state court to exhaust his unexhausted claims. (ECF No. 28, at p. 11).

Instead of choosing one of the options permitted by the Court's order, petitioner filed a "motion for stay or alternatively, motion for enlargement of time to object to Magistrate Report." (ECF No. 30). First, petitioner is informed that the order of March 14, 2012, and indeed every order

1 entered in this case, has been signed by a United States District Judge – not a Magistrate Judge.  
2 Moreover, nowhere in petitioner’s motion does he actually seek a stay. Rather, he disputes the  
3 portion of this Court’s March 14, 2012 order that denies his request for copies of the trial transcript  
4 from his criminal case number C238875. Petitioner’s “motion for stay or alternatively, motion for  
5 enlargement of time to object to Magistrate Report” (ECF No. 30) is denied.

6 Petitioner has also filed a renewed motion for copies of the trial transcript from his criminal  
7 trial. (ECF No. 31). The transcripts requested by petitioner are included in the exhibits attached to  
8 respondents’ motion to dismiss, as previously explained in the order of March 14, 2012. Petitioner’s  
9 motion for transcripts (ECF No. 31) is denied.

10 Finally, the Court’s order of March 14, 2012 stated that “if petitioner fails to respond to this  
11 order within the time permitted, this case may be dismissed.” (ECF No. 28, at p. 11). Petitioner has  
12 not followed this Court’s direction to choose one of the three options enumerated in the order of  
13 March 14, 2012. As such, petitioner is ordered to show cause, in writing, why this action should not  
14 be dismissed for failure to obey this Court’s order. Petitioner shall show cause in writing within  
15 twenty (20) days why this action should not be dismissed in its entirety.

16 **IT IS THEREFORE ORDERED** that petitioner’s “motion for stay or alternatively, motion  
17 for enlargement of time to object to Magistrate Report” (ECF No. 30) is **DENIED**.

18 **IT IS FURTHER ORDERED** that petitioner’s renewed motion for copies of the transcript  
19 from his criminal trial (ECF No. 31) is **DENIED**.

20 **IT IS FURTHER ORDERED** that, within **twenty (20) days** of the entry of this order,  
21 petitioner **SHALL SHOW CAUSE**, in writing, why this action should not be dismissed for failure  
22 to obey the Court’s March 14, 2012 order.

23 **IT IS FURTHER ORDERED** that petitioner’s failure to comply with this Court’s order will  
24 result in dismissal of this action.

25 DATED this 28th day of January, 2013.



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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE